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File identification

Resolution of the rights protection procedure no. PT 58/2018 urged by Mr. (...) against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 14/11/2018 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access, which he had previously exercised before the General Directorate of the Police (hereinafter, the DGP) of the Department of Interior of the Generalitat de Catalunya. Specifically, the person making the claim requested access to their personal data contained in the Generalitat Police Information System file for natural persons (SIP PF), relating to police proceedings.

The claimant specifically complained about the DGP's lack of response to his request for access, which he had made in a letter dated 09/28/2018, and provided a letter indicating his submission on the same date the DGP

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal character (hereafter, RLOPD and LOPD, respectively), by means of an official document dated 11/19/2018, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations that I thought relevant.

3.- The DGP made allegations by means of a letter dated 26/11/2018, in which it set out, in summary, the following:

- That "On 28/09/2018, the aforementioned person (Mr. (...)) registered a request for access to personal data recorded in the files of the SIP area".
- That "On 10/30/2018, the General Directorate of the Police resolved the request submitted and agreed on access to the personal data of the person concerned".

ÿ That "On 05/11/2018, the notification of the resolution was registered as outgoing referenced in the previous point".

ÿ That "On 09/11/2018 the Postal Service attempted to notify the resolution to the address indicated by the person interested in their request.

As stated in the acknowledgment of receipt of the notification, the result of this notification attempt was that the person concerned was unknown at the indicated address. However, a new attempt will be made to notify the access decision by post".

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The claimed entity provided together with its allegations, a copy of the access request that the person making the claim had made before the DGP; copy of the resolution of the director general of the Police, dated 30/10/2018, by which the request for access made by the person making the claim is estimated; copy of the notification of said decision on access to personal data; and copy of proof of Post office indicative of an attempt to notify the resolution.

Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2. - At the time when this resolution is issued, the personal data that were the subject of processing by the DGP and to which the access request referred, the Directive (EU) 2016/680, of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of 'criminal offenses or execution of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), in accordance with what is established in its article 1. In this regard, it should be emphasized that the Directive (EU) 2016/680, has not been transposed into the internal state law within the period provided for the purpose (ended on 6/05/2018), and consequently individuals can directly invoke European law before the courts, regardless of whether or not they have been transposed into national law. Thus, in accordance with the doctrine of the Court of Justice of the European Union, individuals may invoke the direct effect of the directive's precepts when they confer rights unconditionally and in a sufficiently clear and precise manner before public administrations.

It should be noted that although the LOPD has currently been repealed by the LOPDGDD, data processing that is subject to Directive (EU) 2016/680 will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned directive enters into force, in accordance with what has been provided for in transitional provision 4a of the LOPDGDD. Likewise, in accordance with Additional Provision 14a of the LOPDGDD, articles 23 and 24 of the LOPD also remain in force as long as they are not expressly modified, replaced or repealed.

3.- Article 15 of the LOPD, in relation to the right of access, determines the following: "1.

The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.

2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.

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3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of the RLOPD, in its first and second section, provides the following regarding the right of access:

"1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made or planned for this data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Given that the right that is the subject of this resolution refers to a treatment carried out by the security forces and bodies, it is necessary to refer to the specific regulation for these cases provided for, for what is now relevant, in article 23 of the LOPD, which determines the following:

"Article 23. Exceptions to the rights of access, rectification and cancellation

1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may deny access, rectification or cancellation depending on the dangers that may arise for the defense of the State or

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public safety, the protection of the rights and freedoms of third parties or the needs of the investigations being carried out. 2. (...)

3. The person affected who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."

Finally, article 18 of the LOPD, regarding the protection of rights of access, rectification, opposition and cancellation, establishes in its sections 1 and 2 the following:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP has resolved and notified, within the period provided for by the applicable regulations, the right of access carried out by the person making the claim, since precisely the reason for the complaint of the person who started the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 09/28/2018 a letter was entered in the Registry of the DGP by the person here claiming, through which he exercised his right of access to his personal data appearing in the SIP file PF. In accordance with article 29 of the RLOPD, the DGP had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request.

In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party - as is the case - it starts from the date on which the request was entered in the register of the competent body for the

its processing And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, the DGP has not proven to have responded to the request within the period of one month provided for the purpose, since the DGP itself has stated that it did not do so until 09/11/2018, in who made the first attempt to notify the now claimant of the resolution by which his request for access was considered, a copy of which was provided in the hearing procedure, and which was signed on 30/10/2018.

Consequently, the assessment of the claim proceeds from this formal perspective, given that the DGP did not resolve and notify the said request presented to the affected person in a timely manner.

Regarding the merits of the claim, given that the DGP has issued the resolution by which the request for access presented by the person making the claim is considered, it is irrelevant to make further considerations in this regard. However, it is recorded in the proceedings that the DGP tried to notify the resolution on 09/11/2018, and that this attempt was unsuccessful, and the Post Office receipt contained the annotation "Unknown".

On the other hand, the DGP has not proven to have carried out any further action in order to carry out the notification. In this regard, it has been verified that the postal address to which the notification was sent ((...)) does not completely match the one that the applicant had indicated (it seems that he would have indicated the 1st floor and not the 2nd), confusion that, all said, it was easy. It is worth saying that on the same dates this Authority sent here claiming the office of 16/11/2018 in which it claimed receipt of its claim, and this shipment is personally notified to the indicated address, plant 1st, door 6th. (...)Therefore, it is appropriate to require the DGP to carry out the necessary actions to notify the claimant here of the estimated resolution of the access request.

5.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the period of 10 days makes the exercise of the right effective.

For the reasons mentioned in the previous legal basis in fine, it is necessary to require the DGP so that within 10 days, counting from the day after the notification of this resolution, notify the person claiming the estimated resolution with which made the right of access effective. Once the right of access has taken effect in the terms set out, within the same period of 10 days the claimed entity must report to the Authority.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...) against the Management General of the Police of the Department of the Interior of the Generalitat of Catalonia.

Second.- Request the General Directorate of the Police so that, within 10 days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated to the foundation of law 5th. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the General Directorate of Police and the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with the articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Agency Catalan Data Protection Authority, the interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,